

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ORLANDO INGRAM,

Defendant Below,
Appellant,

v.

STATE OF DELAWARE,

Plaintiff Below,
Appellee.

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No. 538, 2018

Court Below: Superior Court
of the State of Delaware

Cr. ID: K1209003136C

Submitted: April 10, 2019

Decided: June 19, 2019

Before **VAUGHN, SEITZ, and TRAYNOR**, Justices.

O R D E R

This 19th day of June 2019, after careful consideration of the parties' briefs and the record on appeal, it appears to the Court that:

(1) Dover police arrested Orlando Ingram on suspicion of involvement in a robbery of a Family Dollar store in Dover. Ingram was eventually charged with several offenses, including resisting arrest and possession of a firearm by a person prohibited ("PFBPP").

(2) Ingram's trial counsel moved to sever the PFBPP charges, and the Superior Court granted the motion. Trial counsel, however, did not move to sever the resisting arrest charge.

(3) After a jury trial on the five non-PFBPP charges, the Superior Court convicted Ingram of all five charges. We affirmed that judgment on direct appeal.

(4) Ingram then moved for postconviction relief under Superior Court Criminal Rule 61, arguing that trial counsel was ineffective for (1) not moving to sever the resisting-arrest charge from the charges that related to the robbery, (2) not objecting to testimony from the arresting officer at trial that he recognized Ingram and that it was difficult to arrest Ingram, and (3) not objecting to a flight instruction. The Superior Court denied his motion, and we affirm.

(5) Ingram has not demonstrated that either the failure to move to sever or the failure to object to the arresting officer's testimony was prejudicial to his defense. In particular, Ingram did not show that it is likely that a court would have excluded significant portions of the arrest evidence from a severed trial on the robbery charges or that the arresting officer's testimony weighed significantly upon the jury's verdict. Nor did Ingram convincingly explain why a flight instruction was unwarranted given that it was undisputed that the robbery suspects fled down a bike path and that police found a pack of unopened Newport cigarettes—with Ingram's fingerprint—along that bike path. Given all that, we cannot conclude that "there was reasonable probability that, but for counsel's [alleged] unprofessional errors, the result of the proceeding would have been different."¹

¹ *Strickland v. Washington*, 466 U.S. 668, 694 (1984).

(6) Also, Ingram has not shown that trial counsel's failure to object to the arresting officer's testimony "fell below an objective standard of reasonableness."² To be sure, the arresting officer's testimony that, when he entered the apartment where he arrested Ingram, he immediately recognized Ingram might have led the jury to infer that Ingram had prior police contacts. But that is not the only inference to be drawn, and even if it were, Ingram has not explained why trial counsel's failure to object was not a reasonable trial strategy that sought to avoid drawing "unwarranted attention" to potentially damaging testimony.³

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Gary F. Traynor
Justice

² *Id.* at 697.

³ *Ayers v. State*, 802 A.2d 278, 283–84 (Del. 2002).